

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JOSE GUADALUPE MEZA-HERNANDEZ	]	
Petitioner,	]	
	]	
v.	]	No. 3:11-0552
	]	Judge Sharp
UNITED STATES OF AMERICA	]	
Respondent.	]	

O R D E R

On September 19, 2011, an order (Docket Entry No.13) was entered denying petitioner's motion for § 2255 relief.

Since the entry of this order, the petitioner has filed a motion (Docket Entry No.17) pursuant to Rule 60(b), Fed.R.Civ.P., alleging "procedural errors that occurred at plea and sentencing were based on the ineffectiveness of counsel and the prosecution's failure to follow the letter of the law ...". The petitioner believes that he was entitled to a four level downward departure on his sentence.

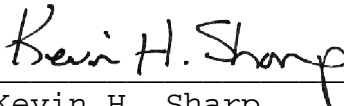
The petitioner is challenging a sentence that was given him in 2009. He has already attacked his conviction and sentence unsuccessfully on the merits once before in the instant action. As a consequence, the Court construes the petitioner's Rule 60(b) motion as a second or successive motion for relief under 28 U.S.C. § 2255. See In re Nailor, 487 F.3d 1018,1023 (6<sup>th</sup> Cir.), cert.

denied 552 U.S. 937 (2007)(it was not error to construe petitioner's Rule 60(b) motion as an attempt to file a second or successive § 2255 motion).

Before a second or successive motion may be adjudicated in the district court, the petitioner must move in the appropriate court of appeals for an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Apparently, the petitioner has not yet sought and obtained the authorization from the Sixth Circuit Court of Appeals needed for this Court to consider his current motion.

Accordingly, the Clerk is directed to TRANSFER petitioner's Rule 60(b) motion to the Sixth Circuit Court of Appeals for further consideration. 28 U.S.C. § 1631; In re: Sims, 111 F.3d 45, 47 (6<sup>th</sup> Cir.1997).

It is so ORDERED.

  
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Kevin H. Sharp  
United States District Judge